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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Patent Application of

Jacob McGuire

Application No.: 09/843,815

Filed: April 30, 2001

For: AUTOMATED DEPLOYMENT AND
MANAGEMENT OF NETWORK
DEVICES

) **MAIL STOP APPEAL BRIEF –**
) **PATENTS**

) Group Art Unit: 2154

) Examiner: JINSONG HU

) Confirmation No.: 9953
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RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Notification dated July 25, 2006, alleges that the Appeal Brief filed April 7, 2006 does not comply with the requirements of 37 C.F.R. §41.37(c)(1)(v). Specifically, the Notification alleges that the Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, with reference to the specification by page and line number and the drawings by reference characters. Applicant respectfully traverses this assertion. Pages 1 and 2 of the Brief contain a concise, three-paragraph explanation of the subject matter defined in the independent claims. The first paragraph consists of an explanation of the background, with reference to specific paragraphs of the specification, to provide a better understanding of the claimed subject matter. The second paragraph describes the subject matter defined in each of the two independent claims, specifically calling out elements of Figure 5 by their reference numbers, as well as citing the pertinent paragraphs in the specification that describe those elements.

When the Examiner was contacted to obtain an explanation why this description was not considered to be compliant, he stated that the rule requires a direct mapping between the claim and the disclosure, rather than a narrative description. It is respectfully submitted that there is no such support, in either the rule itself, or the MPEP, for this statement. The

rule only requires a concise "explanation of the subject matter" defined in the claims involved in the appeal. There is no requirement for a direct mapping nor a preclusion against a narrative description. It is respectfully submitted that the summary provided in the original Brief fully complies with the spirit and scope of 37 C.F.R. §41.37(c)(1)(v).

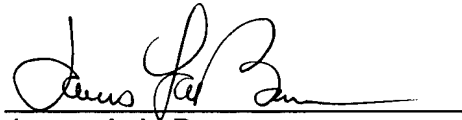
Nevertheless, to enable the appeal to go forward, a substitute Appeal Brief is being submitted herewith, in which the summary of the claimed subject matter comprises a mapping of independent claims 1 and 16 to the disclosure, as requested by the Examiner.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: August 25, 2006

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I. Real Party in Interest

The subject application is assigned to Opsware, Inc., formerly known as Loudcloud, Inc.

II. Related Appeals and Interferences

An Appeal Brief was filed on February 15, 2006, in a related application, No. 09/843,816. As of the date of filing this Brief, an Examiner's Answer has not been received in the related application, and therefore it is not known whether the appeal will proceed to the Board of Appeals in that related application.

III. Status of Claims

The application contains claims 1-21, all of which are currently pending. Claims 5-7 have been identified as containing allowable subject matter. Claims 1-4 and 8-21 stand finally rejected, and form the basis for this appeal.

IV. Status of Amendments

There were no amendments filed subsequent to the final Office Action.

V. Summary of Claimed Subject Matter

The appealed claims comprise two independent claims, namely claims 1 and 16. Claim 1 recites a system for automatically configuring a plurality of different types of network devices (page 1, line 21 to page 2, line 5; page 5, line 25 to page 6, line 4; Figure 1, elements 10, 12, 14, 16, 18, 20). The system includes a library of generic commands that can be applied to said devices (page 9, lines 5-10; Figure 4, elements 32, 34) and converters for converting each of said generic commands into device-specific commands to be applied to individual network devices (page 10, lines 9-23; Figure 4, elements 36a-36n). The system also includes a database storing configuration parameters for said plurality of network devices (page 11, lines 22-26,

page 12, lines 3-11; Figure 5, element 40). Finally, claim 1 recites that the system comprises a configuration interface which receives said parameters from said database and issues generic commands to said library to cause individual ones of said devices to be configured in accordance with said parameters (page 11, lines 26-28; page 17, lines 12-24; Figure 5, element 42).

Claim 16 recites a method for automatically configuring a plurality of different types of network devices (page 1, line 21 to page 2, line 5; page 5, line 25 to page 6, line 4; Figure 1, elements 10, 12, 14, 16, 18, 20). The method includes a step of storing a library of generic commands for configuring said devices (page 9, lines 5-10; Figure 4, elements 32, 34). A second step comprises linking a plurality of converters respectively associated with different ones of said network devices to said library, to convert said generic commands into device-specific commands to be applied to the associated devices (page 10, lines 9-23, Figure 4, elements 36a-36n). The third step comprises retrieving a set of parameters from a database that pertains to the configuration of one type of network device (page 2, lines 12-13; Figure 5, element 40). As a final step, in response to receipt of said set of parameters, claim 16 recites issuing generic commands to said library to cause a device of said one type to be configured in accordance with said parameters (page 12, lines 13-24).

VI. Grounds of Rejection to be Reviewed on Appeal

The final Office Action presents two grounds of rejection for review on this appeal:

1. Claims 1-4, 8, 9, 11, 12, 14, 16, 17, 20 and 21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the Merchant et al patent application publication (US 2002/0128815);

2. Claims 10, 13, 15, 18 and 19 stand finally rejected under 35 U.S.C. § 103, as being unpatentable over the Merchant publication in view of "Official Notice".

VII. Argument

A. Rejection Under 35 U.S.C. § 102

1. Claims 1 and 16

As stated in MPEP § 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference", quoting *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The final Office Action does not meet this standard, since it fails to identify where the Merchant publication discloses "each and every" element recited in the claims.

Claim 1 recites a library of generic commands that can be applied to different types of network devices, and converters that convert the generic commands into device-specific commands. The claim further recites a database storing configuration parameters for the network devices, and a configuration interface which receives said parameters from said database and issues generic commands to said library.

In rejecting the claim, the Office Action refers to elements 410 and 412 in Figure 4 of the Merchant publication as the claimed database. However, the reference does not disclose, nor otherwise suggest, that these elements constitute a database storing configuration parameters. Rather, they are respectively described as a device-specific module that "provide[s] information that allows the device-independent commands to be translated to device-specific commands" and as a host-specific module that "provide[s] information that allows the host-independent commands to be translated to device-specific commands" (Paragraphs 44 and 45). In other words, these modules are the components that perform the functions described in Paragraph 29 and Paragraph 43, lines 6-10, which were cited in the Office Action in connection with the claimed converters. The only function described in the reference for these modules is that of converting device-independent commands into device-specific commands. There is no teaching in the reference to support the assertion that they comprise a database storing configuration

parameters for network devices. The reference does not disclose this claimed element.

Claim 1 recites a configuration interface “which receives said parameters from said database and issues generic commands to said library ...” The final Office Action refers to the Merchant publication at paragraphs 21-23, 25 and 28-32. Appellant is unable to find any teaching of the claimed subject matter in these portions of the reference, or elsewhere within its contents. In particular, there is no disclosure of an interface that receives configuration parameters from a database. (As noted above, the publication does not disclose a database storing configuration parameters.) Nor is it apparent from the Office Action what elements in the Merchant publication are considered to be an interface that issues generic commands to cause network devices to be configured in accordance with received parameters. There is no supportable showing that the reference discloses a configuration interface that operates in the manner recited in claim 1.

For at least these reasons, the final Office Action fails to meet the requirements for rejecting claim 1 as being anticipated by the Merchant publication, since it does not show that “each and every element” of the claim is described in the reference. For the same reasons, claim 16 is not anticipated. It recites a method that includes the following steps, among others:

retrieving a set of parameters from a database that pertains to the configuration of one type of network device; and

in response to receipt of said set of parameters, issuing generic commands to said library to cause a device of said one type to be configured in accordance with said parameters.

Since the Merchant publication does not disclose a database that stores information pertaining to the configuration of network devices, it cannot be interpreted to disclose the claimed “pertaining” step. Likewise it does not disclose the step of issuing commands to cause a device to be configured “in accordance with said parameters”.

2. Claims 2-4, 8, 9, 11, 12, 14, 17, 20 and 21

Claim 2 recites that the interface issues commands to the library to obtain configuration information from individual devices, “and stores said information in said database.” In rejecting this claim, the final Office Action refers to paragraphs 31 and 32 of the Merchant publication. While this portion of the reference discloses that configuration information is obtained from the devices, it does not disclose that such information is stored in a database of configuration parameters. Rather, it only discloses that the responses provided by the devices are used to generate device/host independent commands.

Claim 3 recites that the configuration parameters are stored in the database as a model containing a list of values to which each configuration parameter in an individual one of the devices is to be set, and claim 4 recites that the model also identifies the specific sequence in which the setting of the parameter values is to take place. These claims are rejected with reference to module 410 shown in Figure 4 of the Merchant publication, as well as paragraph 44, lines 8-11. However, this portion of the reference has nothing to do with the storage of a model in a database. Rather, as noted previously, it describes that the modules 410 relate device-specific commands to device-independent commands. There is no discussion of a database, let alone the particulars of a model that might be stored in such a database.

Claim 8 recites that the interface functions to command a console server to send a message to each console connected to the console server, analyze a response to the message that is provided by each console to determine the type of device which transmitted the response, and display a list of device types corresponding to the consoles connected to the console server. This claim is rejected with reference to paragraphs 31 and 32 of the Merchant publication. As discussed above, this portion of the reference discloses that the devices can be queried, and that the responses provided by the devices are used to generate device/host independent commands. There is no teaching of determining device types from those responses, or of “displaying a list of device types corresponding to the consoles”, as recited in the claim.

Claim 9 recites that the system includes a memory storing a template which contains a sequence of commands for configuring each of a plurality of devices of a given type, and that each command that refers to a particular device contains a variable as the identification of the device. The claim also recites that the database stores a record which indicates the respective network address of each specific device for which a given device is to be configured, and that the interface is responsive to a command to configure a given device to retrieve the template and the stored record associated with a given device, substitute the network addresses in the retrieved record for the variables in the template, and issue commands to configure the given device in accordance with the retrieved record and the template. Claims 11 and 12 depend from claim 9, and recite further specifics of the templates.

The rejection of claim 9 is based upon paragraphs 29, 32, 33 and 44-46 of the Merchant publication. None of these portions of the reference discloses the use of a template, nor the substitution of network addresses stored in a database for variables in the template, to generate the commands that are sent to a device. Nor does the final Office Action explain how they might be interpreted to disclose such subject matter. There is simply no support in the reference for the rejection of claims 9, 11 and 12.

Claim 14 recites that the converters transmit the commands in accordance with a transmission protocol that is specific to the individual devices. The rejection of this claim refers to steps 220 and 222 illustrated in the flowchart of Figure 2 of the Merchant publication. These elements of the reference pertain to the translation of device/host-independent commands into device-specific commands. The reference is silent as to the protocol that is used to transmit the commands. As such, it does not describe the subject matter recited in claim 14.

Claim 17 recites that the converters comprise respective plug-in modules that are registered with the library to receive generic commands directed to the devices with which they are associated. The final Office Action states that this claim is rejected "for the same basis as claims 1-4 ..." (Office Action at page 4, section 11). However, claims 1-4 do not recite the details of the converters that are set forth in

claim 17, and the rejection of claims 1-4 does not indicate where the reference might teach the use of plug-in modules as recited in claim 17. As such, the Office Action fails to identify any support in the reference for the rejection of claim 17.

Claims 20 and 21 are also rejected for the same reasons as claims 1-4. For the reasons presented previously with respect to the rejection of claims 3 and 4, the Merchant publication does not anticipate the subject matter of claims 20 and 21.

B. Rejection under 35 USC § 103

The rejection of each of claims 10, 13, 15, 18 and 19 is based on the assumption that "Merchant teaches the invention substantially as claimed in claim 1." However, as discussed above, this is not the case. There are at least two elements of claim 1 that are not described, either explicitly or implicitly, in the reference. As such, the rejection of claims 10, 13, 15, 18 and 19 is not sustainable because it is based upon an unsupported assumption.

VIII. Claims Appendix

See attached Claims Appendix for a copy of the claims involved in the appeal.

IX. Evidence Appendix

There is no Evidence Appendix for this Brief.

X. Related Proceedings Appendix

There is no Related Proceedings Appendix for this Brief.

XI. Conclusion

The rejection under 35 USC § 102 fails to show that the Merchant publication describes "each and every element" of the rejected claims. Since the rejection under 35 USC § 103 is derived from the rejection under 35 USC § 102, it is also unsupported.

The rejections are not properly founded in the statute, and should be reversed.

Respectfully submitted,
Buchanan Ingersoll & Rooney PC

Date August 25, 2006

By:

A handwritten signature in black ink, appearing to read 'James A. LaBarre', written over a horizontal line.

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